



Comptroller General
of the United States

Washington, D.C. 20548

144987

Decision

Matter of: Environmental Systems and Services, Inc.

File: B-244213

Date: October 2, 1991

William H. Gammon, Esq., Moore & Van Allen, and Craig Schnee, Esq., for the protester.
Douglas C. McAllister, Esq., Drinker, Biddle & Reath, for Ocean City Research Corporation, an interested party.
Eileen G. Ginsburg, Esq., and Gregory E. Smith, Esq., Department of the Army, for the agency.
Jennifer Westfall-McGrail, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency failed to conduct meaningful discussions and to evaluate protester's proposal properly is denied where discussion questions led protester into areas of proposal deficiency and where protester has not demonstrated that evaluators' judgments were unreasonable or not in accord with listed evaluation criteria.

2. Where record shows that even if protester's proposal had received the maximum possible score on certain evaluation factors associated with allegedly inadequately discussed issues, it would still not have been in line for award, General Accounting Office is unable to conclude that any inadequacy in discussions prejudiced the protester by depriving it of an opportunity for award.

DECISION

Environmental Systems and Services, Inc. (ESSI) protests the award of a contract to Ocean City Research Corporation under request for proposals (RFP) No. MDA903-91-R-0026, issued by the Department of the Army, Defense Supply Service, Washington, D.C., for engineering and technical support for the Environmentally Acceptable Materials, Treatments and Processes Mantech Thrust Program and the Materials Degradation Abatement Program. ESSI contends that the agency failed to conduct meaningful discussions with it and evaluated its proposal on the basis of factors not set forth in the solicitation.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a requirements contract under which separate delivery orders would be issued as specific tasks are identified. Offerors were asked to furnish loaded hourly rates for seven labor categories (all related to engineering) for a base period and for 4 option years. The solicitation advised offerors that technical superiority would be the most important consideration in selection of an awardee and that cost, although not assigned a numerical weight, would be a substantial factor.

The RFP listed in descending order of importance the factors and subfactors that would be considered in evaluating proposals. The RFP stated that the most important evaluation factor would be the adequacy of the offeror's facilities and equipment, including the adequacy of its corrosion test facilities; its analytical testing capability; and its physical plant. The RFP further stated that one of the subfactors to be considered in determining the adequacy of an offeror's corrosion test facilities was its capability to perform corrosion testing in a salt spray/fog cabinet. The three subfactors to be considered in assessing an offeror's analytical testing capability were its demonstrated ability to perform non-destructive tests, strength tests, and substrate tests. Concerning the adequacy of its physical plant, one of the subfactors to be considered was the availability of appropriate Environmental Protection Agency (EPA) permits, if applicable.

The RFP also stated that the second and third most important factors to be considered in evaluating proposals would be the adequacy of an offeror's technical personnel and the adequacy of its technical approach. Further, it stated that the fourth major evaluation factor would be an offeror's corporate capability. Subfactors to be considered in evaluating an offeror's corporate capability were its organizational capability and its corporate qualifications; elements to be considered in assessing the latter were the relevancy of the offeror's experience in related projects.

ESSI and Ocean City submitted proposals by the February 22, 1991, closing date. The technical evaluation panel evaluated the two proposals and assigned Ocean City a rating of 90.4 and ESSI a rating of 61.5. By letter dated March 18, the contracting officer transmitted written discussion questions to both offerors and requested that they submit their responses, along with their best and final offers (BAFO), by March 25.

The discussion questions addressed to ESSI concerned a range of topics, including its capability to perform corrosion testing in its salt spray/fog cabinets; its capability to obtain appropriate EPA permits; its ability to perform non-destructive test, strength tests, and substrate tests; the relevancy of its experience; the availability and qualifications of its coatings engineers; and the adequacy of its management structure.

After reviewing the offerors' responses to the discussion questions, the technical evaluation panel rescored the proposals. It assigned Ocean City's proposal a revised rating of 98.4, and ESSI's proposal a revised rating of 82.3. The panel found that with regard to the adequacy of facilities and equipment, Ocean City had demonstrated a comprehensive capability to provide all required corrosion testing in all environments, and had provided the necessary information concerning EPA facility permits; the panel found that ESSI, on the other hand, had established its capability to test in a natural marine environment, but had failed to demonstrate a capability to flow natural seawater through its salt spray/fog cabinet. In addition, the evaluators found that ESSI had failed to demonstrate the ability of its subcontractor to conduct non-destructive tests and had failed to indicate whether EPA permits were required for its facilities and, if so, whether the permits were already in place or could be obtained.

Concerning the adequacy of technical personnel, the panel noted that Ocean City's proposal had provided for permanent staff (who met or exceeded the RFP's requirements with regard to both education and professional experience), while ESSI proposed to rely on consultants on an "on-call" basis, an approach which the panel viewed as unworkable for tasks requiring quick turnarounds. With regard to corporate capability, the panel found that Ocean City had documented its extensive experience in both directly and indirectly related projects and had proposed a management structure that would promote effective program management by centralizing employees in a small number of locations and by avoiding reliance on subcontractors and consultants. ESSI, on the other hand, had proposed an organization that, in the panel's view, would be very difficult to manage due to its heavy reliance on consultants and subcontractors and due to the decentralization of its permanent staffers, who worked in seven different offices. The evaluators also found that ESSI had not provided sufficient evidence as to its own corporate experience.

The contracting officer concluded, based on the panel's findings, that Ocean City's proposal represented the best value to the government, although slightly higher in evaluated

cost than ESSI's (\$5,240,826 versus \$4,996,850). On May 16, the agency awarded the contract to Ocean City.

Upon learning of the award to Ocean City, ESSI immediately requested a debriefing. The contracting officer conducted a debriefing for the disappointed offeror on May 22, and furnished ESSI with a written summary of the weaknesses in its proposal, including lack of demonstrated ability of its subcontractor to perform non-destructive tests; management and availability of technical personnel; and corporate experience, as well as other areas.

On May 24, ESSI protested to our Office, complaining that the agency had failed to identify a number of these deficiencies during discussions, thereby denying it the opportunity to correct the perceived flaws in its proposal, and did not properly evaluate its proposal.

ANALYSIS

For discussions in a negotiated procurement to be meaningful, contracting agencies must advise offerors in the competitive range of deficiencies in their proposals, and afford them the opportunity to correct the deficiencies by submitting revised proposals. Federal Acquisition Regulation (FAR) § 15.610; Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407. Agencies need not afford offerors all-encompassing discussions, or discuss every element of a technically acceptable proposal that received less than the maximum possible rating. Rather, agencies need only lead offerors into the areas of their proposals which require amplification. S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159.

Ability to Perform Non-Destructive Tests

ESSI takes issue with the contracting officer's finding that it did not demonstrate the ability to perform non-destructive tests. The protester contends that its BAFO response included an in-depth discussion of non-destructive testing and specifically identified the non-destructive test equipment owned and in use by its subcontractor; in addition, the protester asserts, its initial proposal contained detailed descriptions of team personnel with specific experience in non-destructive testing.

The chairman of the technical evaluation panel disputes ESSI's characterization of its discussion regarding non-destructive testing as being "in depth." The chairman notes that ESSI's discussion of non-destructive testing consisted of a list of the non-destructive testing equipment owned by its subcontractor, together with several conclusory statements regarding its understanding of non-destructive testing, e.g.:

(1) "ESSI and its teaming partner, the LaQue Center, have in place the equipment and procedures to perform both non-destructive and destructive tests and evaluations to determine the state of material degradation of components and systems";

(2) "Having conducted non-destructive testing and examination (NDT, NDE), we understand the principles associated with a variety of such techniques, their application, and their limitations";

(3) "We have hands-on familiarity with borescope, ultrasonic (flaw/thickness detection) and eddy current techniques using LaQue Center-owned portable equipment from their laboratory."

In response to the chairman's comments, ESSI contends that the RFP did not ask offerors to explain how their non-destructive equipment would be used to meet the agency's needs under this program or to describe the operation and limitations of such equipment. Nor, the protester asserts, did the agency request such information during discussions.

Here, the solicitation indicated that one of the factors that would be considered in the evaluation of technical proposals was the adequacy of the facilities and equipment that offerors would use to perform non-destructive analysis. During discussions, the agency specifically advised the protester that in its proposal it "did not specifically talk to non-destructive testing (and that it should) go into some depth on [its] understanding of non-destructive testing." In view of this discussion question and the stated evaluation factor, we think that it was reasonable for the agency to have considered, in evaluating the adequacy of these facilities and equipment, the extent to which the offeror was able to identify the particular non-destructive tests likely to be required to meet the agency's needs and the equipment that would be required to perform these tests. In short, the agency clearly placed the protester on notice that it had to demonstrate its understanding of non-destructive testing. The record shows that ESSI's BAFO did not include an explanation of how the equipment or capabilities noted would be used to meet the agency's needs under this program, nor did it demonstrate an understanding of the operation and limitations of the equipment. Thus, we do not think that it was objectionable for the evaluators to have awarded ESSI less points under the evaluation criterion concerning non-destructive testing based on its failure to discuss how its subcontractor would use the equipment to satisfy the RFP's requirements.

Management Arrangement/Availability of Technical Personnel

Next, ESSI objects to the agency's criticism of its proposed management structure, which provided for 10 staff members scattered throughout the country at 7 different locations and relied heavily on consultants, as very difficult to manage and to the contracting officer's observation at the debriefing that the ideal management solution would have been to have all expertise at one location. The protester also objects to the preference expressed by the contracting officer at the debriefing for in-house employees over "on-call" consultants. The protester maintains that if the agency preferred that an offeror's staff be centralized and that all expertise be in-house, it should have made that preference evident in the RFP and/or through discussions. In addition, the protester asserts that the agency has no reasonable basis for preferring that all expertise be in-house and at one location.

With regard to the protester's argument that the agency should have spelled out its preference for a centralized, in-house staff, agencies are required to set forth in solicitations the factors that they will consider in evaluating proposals, but there is no requirement that they indicate the approaches to satisfying these requirements that they view as optimal. See Pitney Bowes, Inc.--Recon., B-233100.2, June 22, 1989, 89-1 CPD ¶ 587.

With regard to the protester's argument that the agency had no reasonable basis for preferring an approach using in-house staffers instead of subcontractors or a centralized staff instead of a decentralized one, the agency explains that the aspect of ESSI's reliance on subcontractors that troubled it was the cumbersome process for subcontractor selection outlined in the protester's proposal. The evaluators were apprehensive that compliance with this plan would hinder the protester's ability to perform tasks on a quick turnaround basis, as required by the RFP's statement of work.

The record shows that the protester failed to include written letters of commitment from most of its proposed subcontractors in its proposal. The agency specifically advised the protester during discussions that "the widespread dispersal of consultants [could] adversely impact your capability to perform analyses on a quick turnaround basis." We find that the agency reasonably viewed the scattering of ESSI's staffers as a drawback since close liaison with Army Materiel Command Headquarters, from which virtually all task orders would be initiated and at which meetings to structure plans of action for particular tasks would be held, was required. We think that the record provides ample basis for the agency's preference for a centralized, in-house staff and the consequent downgrading of the protester's proposal.

Corporate Experience

ESSI also takes issue with the agency's criticism of its proposal as failing to provide sufficient detail with regard to its experience on related projects. The protester concedes that it furnished little detail regarding its own corporate experience (since, as a newly formed company, it has limited experience), but contends that it furnished a great deal of information concerning the experience of its personnel and of its principal subcontractor.

First, although the agency did identify ESSI's failure to provide sufficient detail regarding its relevant experience as a weakness in its proposal, the evaluators in fact awarded the protester's proposal substantial credit under the evaluation subfactor relating to such experience. Two of the evaluators in fact awarded ESSI a perfect score under this subfactor.

Second, ESSI's protest on this ground is in essence a disagreement with the evaluators' judgment as to the merits of its proposal and not an argument regarding the sufficiency of discussions or the application of undisclosed evaluation criteria. Here, the chairman of the technical evaluation panel, who gave ESSI only partial credit under the evaluation subfactor relating to experience, explains that he viewed the information submitted by the protester with regard to its experience as deficient in several respects. Although ESSI described a number of contracts related to Materials Degradation Abatement on which its subcontractor, the LaQue Center, had worked, none of the work related to military systems and equipment, and the majority was commercially related. Further, although ESSI's BAFO included a matrix of categories of experience for its consultants, the matrix did not provide any details regarding that experience, and only limited information was provided elsewhere in the proposal. Finally, in the chairman's view, ESSI had not demonstrated that it, as an entity, had sufficient corporate experience to be able to perform the oversight and quality control functions required of the prime under the contract to be awarded here. In our view, it was reasonable for the panel chairman to conclude, based on these considerations, that ESSI's proposal should not receive the maximum possible score under the subfactor relating to its experience.

Other Discussions Areas


ESSI questions the adequacy of discussions in other technical areas concerning facility permits, seawater testing, and the qualification of its proposed engineers. Nevertheless, given the predominance here of technical over cost factors, given the substantial disparity in technical point scores and the

major deficiencies in the protester's proposal that we have already discussed, the record clearly shows that even if the protester were given maximum point scores for all factors allegedly inadequately discussed, it would not have received the award. We therefore are unable to conclude that any inadequacy in discussions prejudiced the protester by depriving the firm of an opportunity for award. See Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715.1/

Finally, the protester contends that if, even with full credit for all of the factors associated with the issues not adequately discussed, its proposal would still not have been selected, then the agency erred in failing to exclude its proposal from the competitive range.

We disagree. Although ESSI's initial technical score was substantially lower than Ocean City's, the agency had no reason to think that ESSI would not be able to raise that score considerably after discussions, as ESSI in fact did. Thus, we do not think that it was unreasonable for the agency to have included ESSI in the competitive range initially. The agency also could not have revised its competitive range determination to exclude ESSI after discussions had been completed but before BAFOs had been submitted, as the protester suggests, since offerors submitted their responses to the discussion questions with their BAFOs.

The protest is denied.


for James F. Hinchman
General Counsel

1/ Indeed, the agency states in its report that it should in fact have rejected ESSI's proposal as technically unacceptable based on the protester's failure to offer two fully qualified engineers as also required by the RFP. (According to the chairman of the technical evaluation panel, the evaluators did not discover this deficiency in the protester's proposal until they re-examined ESSI's BAFO while preparing their response to this protest.)